

EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE

EHRACSUMMER 2008
ISSUE 9

МЕМОРИАЛ

In partnership with Memorial Human Rights Centre (MHRC), the Georgian Young Lawyers' Association (GYLA) and Article 42 of the Constitution

Is the right to life adequately protected in Georgia?

*Tamar Khidasheli, Georgian Young
Lawyers' Association*

The frequent use of lethal force and the sharp rise in the number of suspects killed on the spot by Georgian law enforcers during so-called 'special operations' remains a cause of concern for human rights groups in Georgia. While speculations on the reasons and causes for such a tendency continue,¹ this paper will limit itself to

an examination of existing legislative safeguards concerning the right to life.

In its case-law, the ECtHR has repeatedly confirmed that the failure of the State to put in place an appropriate legal and administrative framework to deal with the lethal force used by law enforcement officials can in itself amount to a violation of the right to life.² Accordingly, bearing in mind that some cases of deprivation of life during

'special operations' might be successfully argued before the ECtHR, this paper will try to examine whether Georgia meets European standards in this respect.

Art. 13 of the Law on Police of Georgia regulates the issues relating to the use of firearms by law enforcement officials. The Law was adopted in 1993, before Georgia ratified the ECHR. Since then, Art. 13 has not been amended. The law provides that firearms shall be used

as a measure of last resort. However, it completely omits any reference to the requirements of 'absolute necessity' or 'strict proportionality.'

The Law provides for situations where law enforcement agents are authorised to use firearms as a means of last resort. In particular, under paragraph 4:

A law enforcement official is entitled to use firearms:

- a) In self-defence or defence of others against the real threat of death or serious injury;
- b) In order to prevent the seizure of a firearm;
- c) In order to free hostages;
- d) In order to prevent the escape of a person from a place of detention or imprisonment;
- e) In order to prevent the perpetration of a grave crime, or to effect the arrest of a person who committed such a crime, if he/she resists their authority or to prevent his or her escape;
- f) In order to repel attack against private apartments, protected objects, state institutions, public organisations or against private property;
- g) In defence of citizens from attack by dangerous beasts;
- h) In order to damage a vehicle with the intent to stop it, if the action of a driver presents a real danger to the life and health of individuals and the driver does not obey the multiple warnings of law enforcement officials to stop.

Law enforcement officials are required to give a clear warning of their intent to use firearms before discharging their weapons.³ In case of necessity, they are permitted to fire a warning shot. However, para. 6 of Art. 13 authorises law enforcement agents to use firearms without giving a warning in cases of:

- a) Unexpected armed attack or attack from military equipment, any type of vehicle or mechanical device;
- b) When a detained or arrested person

tries to escape using a vehicle or from a vehicle;

- c) When a person offers armed resistance during arrest or detention;
- d) Armed escape of a detainee;
- e) When a detainee escapes from a vehicle or in forests and places where it is easy to disappear from sight.⁴

The list of circumstances permitting the use of lethal force is obviously wider than that permitted by Art. 2 of the ECHR. For example, the law authorises the police to use firearms for repelling attack against private or public property without qualifying whether the 'attack' must be life-threatening or not. A second exception is when the law implicitly justifies deprivation of life in order to prevent a person seizing a firearm from a police officer. At first sight, this exception sounds logical, but only if one is assured that police actions could never be unlawful. What if an individual, lawfully trying to protect himself from unlawful violence by the law enforcer attempts to seize the latter's gun?

Art. 2 of the ECHR explicitly provides that any action that may result in the deprivation of life must be 'lawful'. ECtHR jurisprudence also qualifies the limited circumstances provided for in Art. 2, where it is permitted to use potentially lethal force:⁵

1. Self-defence or defence of others from unlawful violence;
2. Effecting arrest or preventing the escape of a person who has been lawfully detained; or

3. Quelling a riot or insurrection.

Accordingly, there can be no other circumstances in which it is permissible to kill. Thus, it might be argued that by authorising the use of potentially lethal force in circumstances not provided by the ECHR, the Law on Police contradicts the ECHR.

Moreover, Art. 13 permits law enforcement officers to use firearms in order to prevent the escape of a person from the place of detention

or imprisonment. Para. 6 of Art. 13 provides for circumstances where it is permitted to use potentially lethal force without giving a prior warning. The law fails to evaluate the nature of the offence committed by the fugitive and the threat he or she poses.⁶ Thus, Art. 13 effectively permits lethal force to be used when arresting a person for even the most minor offence, in certain cases (when a fugitive tries to escape) without even giving prior warning.

As it was unequivocally stated in *Nachova v Bulgaria*, such a legal framework is fundamentally deficient and falls well short of the level of protection 'by law' of the right to life that is required by the ECHR in present-day democratic Europe.⁷

In addition, the law blatantly contravenes the standards reflected in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which authorises the use of lethal force only in life-threatening circumstances.

Therefore it can be argued that the Georgian State fails to comply with its obligation under Art. 2 to secure the right to life by putting in place an appropriate legal framework on the use of firearms by law enforcement agents.⁸ It does not seem groundless to claim that if a 'special operation' case were to reach the ECtHR, the Georgian Government would be held responsible for not having done "all that could be reasonably expected of them to afford citizens, and in particular to those against whom potentially lethal force was used, the level of safeguards required"⁹ by European standards.

1 Dolidze, A., *Georgian Police Shooting to Kill*, EHRAC Bulletin, Issue 6, p. 3.

2 *Makaratzis v Greece* (No. 50385/99) GC, 20/12/2004.

3 Para. 5 of Art. 13.

4 Unofficial translation.

5 *Stewart v UK*, European Commission (No. 10044/82) dec. 10/7/84.

6 *Nachova and Others v Bulgaria* (Nos. 43577/98 & 43579/98) 6/7/05, para.96.

7 *Ibid.*, para.100.

8 *Ibid.*, para.102.

9 *Supra* no. 2, para.71.